



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 22 2018

REPLY TO THE ATTENTION OF:  
WQ-16J

Dan Everson, Field Supervisor  
U.S. Fish and Wildlife Service  
Ohio Ecological Services Field Office  
4625 Morse Rd., Suite 104  
Columbus, OH 43230

Dear Mr. Everson:

On August 1, 2018, the U.S. Environmental Protection Agency received from the Ohio Environmental Protection Agency a rule change package containing revisions to the water quality standards applicable to wetlands at Ohio Administrative Code (OAC) Chapter 3745-1-51. As described below, these revisions increase the level of protection provided by Ohio's existing wetland narrative criteria.

These new and revised rules apply to all wetlands in Ohio. Consequently, they have the potential to affect any federally-listed threatened and endangered species that are, or may be, present in wetlands in Ohio. EPA's evaluation of the potential impacts of the revised rules on listed species is provided below.

Ohio's wetland water quality standards include narrative criteria at OAC 3745-1-51 requiring the protection of hydrology (OAC 3745-1-51(A)) and water quality (OAC 3745-1-51(B)) to prevent significant adverse impacts to the lists of items provided in rule. The adopted rules revise the existing criteria by expanding the protection of hydrology to include consideration of "[t]he biological integrity of natural floral and faunal communities" and expanding the protection of water quality to include consideration of "[b]iodiversity" and "[m]aturity level of woody vegetation." As discussed in the administrative comment to the rule, these rules apply to the issuance of Section 401 water quality certifications, National Pollutant Discharge Elimination System permits, and permits and plan approvals for water pollution controls.

The revisions expand the scope of considerations required when Ohio evaluates whether an action will cause significant adverse impacts to a wetland and, thus, have the effect of making Ohio's existing wetland narrative criteria more stringent. While the revisions do not specifically require consideration of federally-listed threatened or endangered species, the added considerations broadly prohibit significant adverse impacts to biological communities present in or dependent on wetlands, which would include any federally-listed threatened or endangered species present or potentially present in wetlands. Consequently, these revisions increase the level of protection provided to federally-listed threatened or endangered species and any effect of the rule revisions on federally-listed threatened or endangered species will be wholly beneficial.

For the reasons described above, EPA concludes that the adopted rules at OAC 3745-1-51 may affect, but are not likely to adversely affect, federally-listed threatened and endangered species in Ohio. Consistent with the requirements of Section 7 of the ESA, we request that you review this evaluation and make a determination on whether or not you concur with our conclusions. If you agree with our conclusions, please provide your written concurrence to EPA as soon as reasonably possible.

Thank you for your attention to this matter. If you have any questions or will require more information in order to conclude consultation on this matter, please contact Aaron Johnson of my staff at (312) 886-6845 or [johnson.aaronk@epa.gov](mailto:johnson.aaronk@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "D. Scott Ireland", written over the printed name.

D. Scott Ireland, Chief  
Water Quality Branch

cc: Jeromy Applegate, USFWS, Ohio Field Office